REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO(OS) NOS. 286-288 OF 2005**

% **Date of Decision** : 15th May, 2007.

SHRI TEJPAL SINGH BHATIA & ORS. .... Appellants.
Through Mr. Arun Bhardwaj, Sr. Advocate with
Mr.Shiv Kumar, Advocate.

VERSUS

UNION OF INDIA & ORS. .... Respondents.
Through Ms. Sangeeta Chandra, Advocate.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The present appeals by Mr. Tejpal Singh Bhatia, Mrs. Harinder

Kaur Bhatia and Malsh Enterprises Pvt. Ltd. is directed against the Order dated 12th September, 2005 dismissing the application filed by the appellants under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code, for short) along with an application under Order XXXIX, Rule 2A of the Code.

2. The appellants herein have filed the Suit seeking permanent injunction restraining the respondent-DDA, Union of India and the Lt. Governor, Delhi their agents and servants from interfering with peaceful possession of agricultural land measuring in total 19 bighas and 19 biswas situated in revenue estate of Mehrauli, New Delhi. The details of the land has been mentioned in the plaint.

3. Learned counsel for the appellants had submitted that the respondents are wrongly claiming that the land, subject matter of the Suit stands acquired by the Government of India, Government of National Capital Territory of Delhi and vests with the respondent-Delhi Development Authority (hereinafter referred to as DDA, for short).

4. In this regard, learned counsel for the appellants had drawn our attention to the Notification under Section 4 of the Land Acquisition

Act, 1894 (hereinafter referred to as the Act, for short) dated 24th October, 1961 by which large track of land measuring 16,000 acres was acquired for planned development of Delhi. It was stated that in the said Notification full particulars and details of khasra numbers, etc had not been given. It was further argued before us that Writ Petition (Civil) No. 702/1969 was dismissed as withdrawn on 14th August, 1969 and therefore there was no decision on merits. Regarding the second petition no. W.P.(C) No.1805/1985 it was submitted that the same was dismissed on the ground of laches and delay and therefore the dismissal of the said writ petition could not have been a ground to reject the application under Order XXXIX, Rules 1 and 2 of the Code. It was argued that issues have been framed and therefore status quo should have been directed to be maintained.

5. Learned counsel for the respondent, on the other hand, submitted that this is a third round of litigation in which similar issues and contentions have been raised regarding identity of the land covered by Notification under Sections 4 and 6 of the Act. She had submitted that in the earlier proceedings all these issues had already been raised

and the impugned Order passed was justified. Reliance was placed upon the decision in the case of ***Bahadur Singh versus Union of India and others*** reported in 122 (2005) DLT 586 (DB).

6 On 24th October, 1961 about 16,000 acres of land marked as Block nos. 1-24 was acquired by a Notification under Section 4 of the Act. For the purpose of identification, a map was enclosed with the Notification and the description of the area was also given in Annexure 2.

7. Thereafter, the said Notification under Section 6 of the Act was issued in 1969. It is an admitted position that the acquisition proceedings were made subject matter of challenge by M/s.Bhai Traders and Financiers Pvt. Ltd. who had filed Writ Petition (Civil) No. 702/1969. Similar writ petitions were also filed by several persons against the said acquisition proceedings. The writ petition M/s. Bhai Traders and Financiers Pvt. Ltd. was not pressed and dismissed on 25th September, 1980. It may be mentioned here that in other writ petitions the validity of the acquisition proceedings was upheld.

8. Subsequently, M/s. Bhai Traders and Financiers Pvt. Ltd. sold

the land subject matter of the Writ Petition No. 702/1969 to M/s. Montari Enterprises Pvt. Ltd. which in turn sold “the land” to the appellants-plaintiff on or about October, 1955. M/s.Montari Enterprises Pvt. Ltd in 1985 filed another Writ Petition (Civil) No. 1805/1985 challenging the acquisition proceedings. In this Writ Petition, specific question and issue about the identity of the land belonging to M/s. Montari Enterprises Pvt. Ltd. was raised and it was stated that the said land was not covered by the acquisition proceedings under the Notification issued under Section 4 of the Act. Challenge was also made to the Notification issued under Section 6 of the Act and the Award dated 9th December, 1983 by which the land belonging to M/s. Montari Enterprises Pvt. Ltd. was acquired.

9. The said Writ Petition was dismissed by a detailed speaking order dated 30th October, 2003 passed by a Division Bench of this Court. In para 2 of the said judgment, the Court recorded the contention of the petitioner therein, namely, M/s. Montary Enterprises Pvt. Ltd. that the Notification under Section 4 did not cover the land, the subject matter of the writ petition and only referred to an imaginary line and did

not specifically refer to khasra/survey numbers. Reference was also made to Order dated 13th November, 1997 passed by the Division Bench for demarcation of the land belonging to the petitioner therein. It was also argued that withdrawal of Writ Petition (Civil) No. 702/1969 on 25th September, 1980 cannot come in the way of the petitioner therein as the land was not covered by the acquisition proceedings. This contention was rejected by the Division Bench. The Division Bench referred to the principles underlying Order XXIII, Rule 1 of the Code. It was held that as the petitioner-M/s.Bhai Traders and Financiers Pvt. Ltd. had withdrawn the writ petition, it was not open for M/s. Montary Enterprises Pvt. Ltd. to raise pleas which had already been abandoned after lapse of several years. In this regard, the Division Bench referred to judgment of the Supreme Court in ***Sarguja Transport Services versus State Transport Appellate Tribunal, Gwalior and others*** reported in AIR 1987 SC 88. Reference was also made to ***State of Rajasthan versus D.R. Laxmi*** reported in 1996 (6) SCC 445 wherein it has been held that law of limitation and laches bars a person from questioning and challenging the validity of an order. Courts invalidate

an order only if the right remedy is sought by the right person in the right proceedings and circumstances. A person who has waived his rights does not deserve a discretionary remedy. By this , the Courts do not make a void order valid but prohibit a person from taking recourse to legal remedies. Reference was also made to ***State of Haryana versus Dewan Singh*** reported in 1996 (7) SCC 394 and ***Municipal Council, Ahmednagar versus Shah Hyder Beig*** reported in 2000 (2) SCC 48 for the principle that equitable doctrine, namely, 'delay defeats equity' should be given fullest application to proceedings initiated under Article 226 of the Constitution of India. Decision in the case of ***Municipal Corporation of Greater Bombay versus Industrial Development Investment Company Pvt. Ltd***. reported in 1996 (11) SCC 501 was quoted. A.K. Sikri, J. in his separate but concurrent judgment noted that the dispute raised in the writ petition related to demarcation of the land and the contention of the petitioner therein that the land was purchased by the said petitioner from M/s. Bhai Traders and Financiers Pvt. Ltd. was not covered by the Notification under Sections 4 and 6 of the Act and the Award. However, the contention

was rejected. A.K. Sikri, J. has specifically held that this contention cannot be permitted and allowed to be raised in the writ petition as it was barred in view of the principles contained in Order XXIII, Rule 1 of the Code. It was also held that there was no occasion or cause for M/s. Montari Enterprises Pvt. Ltd to challenge the Notification and the acquisition proceedings in case the land belonging to M/s. Bhai Traders and Financiers Pvt. Ltd. was not subject matter of acquisition. In the said judgment it was further opined that in case M/s. Bhai Traders and Financiers Pvt. Ltd. wanted to challenge and question the Notification and boundaries covered by the Notification under Section 4 of the Act including the plea that the land in question was not the subject matter of Notification under Section 4 of the Act, it was open for them to raise all such pleas in Writ Petition (Civil) No. 702/1969. It was accordingly held that no such pleas could now be raised by Montari Enterprises Pvt. Ltd. and principle of estoppel as held by the Supreme Court in ***Sarguja Transport*** (supra) was applicable.

10. It may be noted here that the learned counsel for the appellants had admitted before us that the appellants had purchased

the land in question from M/s.Montari Enterprises Pvt. Ltd. on 26th October, 1995 i.e. before the decision dated 30th October, 2003 in Writ Petition (Civil) No 1805/1985. The appellants, therefore, are bound by the decision given in the said case being subsequent purchasers before the date of the judgment. In any case, the appellants cannot claim a better right than M/s. Montari Enterprises Pvt. Ltd., the person who had sold them the land in question. The appellants herein are bound by the judgment dated 30th October, 2003 in WP(C) No. 1805/1985. (see provisions of Order XXII, Rule 10 of the Code and **Dhurandhar Prasad Singh versus Jai Prakash University** reported in (2001) 6 SCC 534). As far as the appellants' are concerned, prima facie the civil suit will be barred and not maintainable on account of general principles of res judicata as a result of dismissal of the Writ Petition (C) NO. 1805/1985 filed by Montari Enterprises Private Limited.

11. The appellants have virtually raised the same issues as were raised by M/s. Montari Enterprises Pvt. Ltd. in Writ Petition (Civil) No. 1805/1985. The said questions and issues after consideration did not find approval and the said writ petition was dismissed vide judgment

dated 30th October, 2003. In these circumstances, we do not think the appellants have been able to make out a prima facie case and/or balance of convenience is in their favour. Granting temporary injunction is always a discretionary order which has to be passed keeping in view existing of a prima facie case, balance of convenience and irreparable harm. These three aspects have to be kept in mind. The appellants have not been able to establish a prima facie case, show balance of convenience and equity is in their favour or irreparable harm shall be caused to them. On the other hand, the facts show a deliberate and concerted effort to stall and prolong acquisition proceedings. Award in the present case was passed on 9th December, 1983. In view of the fact that the appellants claim their right through M/s. Montari Enterprises Pvt. Ltd and M/s. Bhai Traders and Financiers Pvt. Ltd. who had earlier filed writ petitions but had failed or had withdrawn the same, granting temporary injunction in a civil Suit is not justified.

12. It is well settled that the principles of res judicata as well as constructive res judicata equally apply to an order/judgment passed in a writ petition, which is later on made the subject matter of a civil suit.

Explanation 4 to Section 11 of the Code is clear. Reference in this regard can be safely made to the judgment of the Supreme Court in the case of ***Direct Recruit Class II Engineering Officers' Association versus State of Maharashtra*** reported in (1990) 2 SCC 715 wherein it has been held that judgment disposing of a writ petition on merits will bind the parties until it is set aside in appeal and the parties cannot be permitted to circumvent and get over the judgment by approaching the Supreme Court under Article 32 of the Constitution of India. Once a subject matter has been decided and a judgment is delivered by a Court of competent jurisdiction, the said adjudication is conclusive and final not only as to the actual matter determined but also every other matter which the parties might or ought to have litigated or which was incidentally or essentially connected to the subject matter of litigation. Reference in this regard can also be made to ***Dr. Das Rao Deshmukh versus Kamal Kishore*** reported in AIR 1996 SC 391. The principle of res judicata and constructive res judicata equally apply as the issue and subject matter raised in the present appeals already stand decided and adjudicated in Writ Petition no. 1805/1985 titled M/s.

Montari Enterprises Pvt. Ltd. versus Land Acquisition Collector and another decided on 30th October, 2003.

13. We may also mention here that the consolidation scheme prepared in 1976 cannot furnish a fresh cause of action and negate the effect of withdrawal of Writ Petition (Civil) No. 702/1969. The said Writ Petition was withdrawn after consolidation scheme have been notified in 1979 i.e. on 25th September, 1980. Moreover, Writ Petition (Civil) No. 1805/1985 was filed after the consolidation scheme. We may also state here that the learned counsel for the respondent-DDA has pointed out that the consolidation scheme was in respect of the area which was not notified and therefore did not include the land which is subject matter of the acquisition proceedings.

14. In view of the above, we find no merit in the present Appeal and the same is dismissed with costs of Rs.10,000/- which shall be payable to the respondent-DDA.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

MAY 15, 2007.
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